

Northeastern University and Service Employees International Union, Local 254, AFL-CIO. Case 1-CA-19442

May 19, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Upon a charge filed on January 13, 1982, by Service Employees International Union, Local 254, AFL-CIO, herein called the Union, and duly served on Northeastern University, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1, issued a complaint on January 29, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on July 1, 1981, following a Board election in Case 1-RC-17241, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about September 8, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On February 18, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On February 18, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on February 24, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

¹ Official notice is taken of the record in the representation proceeding, Case 1-RC-17241, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enf'd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enf'd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enf'd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and opposition to the Motion for Summary Judgment, Respondent admits that the Union has requested it to bargain and that it has refused, but contends that the Union's certification is valid because the unit certified is inappropriate for the purposes of collective bargaining, and because of the objections to the election and the failure to hold a hearing on those objections. Respondent also contends that the Board's denial by telegram of its requests for review of the Regional Director's Decision and Direction of Election and Supplemental Decision and Certification of Representative, respectively, without having before it the entire record in the underlying representation matter, constitutes an abuse of discretion and a denial of due process. It further contends that in order for the Board to be able to fairly rule on the General Counsel's motion and Respondent's opposition, the Board must also have before it the entire record in the underlying representation proceeding. The General Counsel argues that all material issues have been previously considered and that there are no litigable issues of fact requiring a hearing. We agree with the General Counsel.

Review of the record herein, including that in the representation proceeding, Case 1-RC-17241, establishes that upon a petition duly filed under Section 9(c) of the Act, a hearing was held before a hearing officer of Region 1 of the Board. Following the hearing, the Regional Director for Region 1 issued a Decision and Direction of Election for a unit of Respondent's transportation department employees. In that Decision and Direction, the Regional Director found that the record was not sufficiently clear to make a determination on the supervisory status of Respondent's coordinator of transportation and warehousing, James Antonizick, and directed that he be permitted to vote under challenge. Thereafter, Respondent filed with the Board a request for review of the Regional Director's Decision and Direction of Election, requesting that the Board review the Regional Director's determination that James Antonizick be permitted to vote under challenge. On May 12, 1981, the Board by telegraphic order denied Respondent's request for review.

Accordingly, on May 14, 1981, an election was conducted in the aforementioned unit. The tally was 6 for and 4 against the Union; there were no challenged ballots. Respondent timely filed objections to the conduct affecting the results of the election, alleging, essentially, that the Board's failure to determine the supervisory status of Respondent's coordinator of transportation and warehousing provided grounds for setting aside the election. After investigation, the Regional Director, on July 1, 1981, issued a Supplemental Decision and Certification of Representative in which he overruled Respondent's objections in their entirety and certified the Union as the exclusive bargaining representative of the employees in the unit found appropriate. On July 27, 1981, Respondent filed a timely request for review of the Regional Director's supplemental decision, reiterating its objections and requesting that these objections be sustained. By telegraphic order of August 25, 1981, the Board denied Respondent's request for review, thereby finding in effect not only that Respondent's objections did not warrant overturning the election, but also that those objections did not raise substantial or material issues warranting a hearing.

In its position to the General Counsel's Motion for Summary Judgment, Respondent for the first time contends that the Board's denial of its request for review without having the stenographic report of the preelection hearing or the entire investigative file on election objections before it constitutes an abuse of discretion and a denial of due process. We find no merit in this contention. Section 3(b) of the Act authorizes the Board to delegate to its regional directors final decisionmaking power in representation proceedings, subject to discretionary review by the Board. Respondent challenged the Regional Director's decisions by timely filing a request for review with the Board. Under Section 102.67(d) of the Board's Rules and Regulations, Series 8, as amended, "Any request for review must be a self-contained document enabling the Board to rule on the basis of its contents without the necessity of recourse to the record; however, the Board may, in its discretion, examine the record in evaluating the request." Where, as here, it appears from the decisions of the Regional Director and the briefs in support of the respective requests for review that no substantial and material issues exist, we find that it is a proper exercise of our discretion to deny the requests for review solely on the basis of those documents. This finding

is supported by the Act's policy of expeditiously resolving questions concerning representation.²

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.³

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Massachusetts corporation, with its principal office and place of business at Huntington Avenue, in the city of Boston, Commonwealth of Massachusetts, is engaged in the operation of a private nonprofit educational institution. Respondent, in the course and conduct of its operations, annually derives gross revenues, for use with no restrictions, in excess of \$1 million and annually purchases and receives at its Boston, Massachusetts, campus goods and materials valued in excess of \$5,000 directly from points outside the Commonwealth of Massachusetts.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Service Employees International Union, Local 254, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

² *Trustees of Boston University* 242 NLRB 110, 111, fn. 4 (1979). See also *Revco D.S., Inc. v. N.L.R.B.* 653 F.2d 264 (6th Cir. 1981); *The Bakery, Incorporated*, 259 NLRB 766 (1981).

³ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All employees in the Transportation Department employed by Respondent at its Boston, Massachusetts campus, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

2. The certification

On May 14, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 1 designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 1, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about August 27, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about September 8, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since September 8, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Northeastern University, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship

to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Northeastern University is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Service Employees International Union, Local 254, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees in the Transportation Department employed by Respondent at its Boston, Massachusetts, campus, but excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 1, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 8, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Re-

spondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Northeastern University, Boston, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Service Employees International Union, Local 254, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All employees in the Transportation Department employed by the Respondent at its Boston, Massachusetts campus, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Boston, Massachusetts, campus copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly

signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Service Employees International Union, Local 254, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees in the Transportation Department employed by us at our Boston, Massachusetts campus, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

NORTHEASTERN UNIVERSITY